

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO DIVISION OF JUDGES**

**KAVA HOLDINGS, LLC, et al., d/b/a
HOTEL BEL AIR**

and

Case 31-CA-074675

UNITE HERE – LOCAL 11

*Yaneth Palencia and Sarah Ingebritsen, Esqs.,
for the General Counsel.*

*Karl M. Terrell and Diana Lerma, Esqs. (Stokes Wagner ALC)
for the Respondent.*

*Jeremy Blasi and Kirill Penteshin, Esqs., (UNITE HERE Local 11, Los Angeles, California)
for the Charging Party.*

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

Lisa D. Ross, Administrative Law Judge. On January 25, 2021, the National Labor Relations Board (the Board) affirmed my initial Decision finding that Kava Holdings, LLC., et al., d/b/a Hotel Bel Air (Respondent) violated Sections 8(a)(3) and (1) of the Act by refusing to rehire unit employees who were laid off in September 2009 when the Hotel closed for renovations and who reapplied for their positions beginning July 26, 2011. See *Kava Holdings, LLC, et al. d/b/a Hotel Bel-Air*, 370 NLRB No. 73 (2021).

In the Factual section of my Decision, I noted that there were 152 former unit employees who were not rehired to their former positions with Respondent. However, in the Remedy, Order and Notice sections of my Decision, I ordered reinstatement and make whole relief for 139 former unit employees who were listed in Appendix A of the amended complaint. As such, there were 13 unidentified former employees (152-139=13) that were not specifically included in my Decision who may be entitled to relief. Accordingly, the Board severed and remanded the case in order for me to clarify and/or resolve the limited issue of whether an additional 13 individuals are entitled to reinstatement and make whole remedies.

Respondent appealed the Board's affirmance of my Decision to the Ninth Circuit Court of Appeals (9th Circuit). During that same time period, on March 2, 2021, Respondent moved to temporarily stay these remand proceedings pending a decision on Respondent's Petition for Review by the 9th Circuit. Counsel for the Acting General Counsel and UNITE HERE Local 11 (the Union or Charging Party) opposed the motion.

On March 16, 2021, I denied Respondent's stay. However, in my Order denying Respondent's stay, and in an effort to expedite the remand proceedings, I mentioned that I could

simply amend the Remedy, Order and Notice sections of the Decision to resolve the discrepancy I created in referencing 152 former unit employees as alleged discriminatees in the Factual section then later referencing 139 former unit employees as alleged discriminatees in the Remedy, Order and Notice sections of the Decision (resulting in the 13 unidentified former employees [152-139=13]).

By email on April 6, 2021, I formally proposed to amend the Remedy, Order and Notice sections of the Decision, changing my reference to the “139 former unit employees” to “*all Unit employees laid off as a result of the closure of the Hotel Bel Air on September 30, 2009 who applied for employment with the Hotel prior to its reopening in October 2011 but were not rehired, including, but not limited to, those individuals listed in Attachment A (known as the affected employees).*” Everything else in the Decision would remain the same.

I believe this amendment would be the best, most effective way to resolve who the alleged discriminatees are without the necessity of another trial and/or extensive post hearing briefing. Moreover, since we do not yet know the exact number of affected employees that may be entitled to relief, referencing the alleged discriminatees as “all affected employees” would leave Counsel for the Acting General Counsel to actually prove up how many employees may be entitled to relief during the compliance phase of the case. Finally, this change would end the remand proceedings expeditiously, and Respondent could return to its appeal with the Ninth Circuit. I gave the parties until April 9, 2021 to respond.

By email dated April 8, 2021, Counsel for the Acting General Counsel did not object to my proposed amendment. By email on April 9, 2021, Counsel for the Charging Party also agreed to the proposed amendment. To date, Respondent failed to timely respond which I construe as its assent to the proposed amendment.

Accordingly, the following supplemental decision incorporates the findings of fact, discussion and analysis and conclusions of law contained in my initial Decision (except footnote 16, which has been renumbered to footnote 15, and footnote 17, which has been renumbered to footnote 16). However, I hereby amend the Remedy, Order and Notice sections in my Decision dated December 19, 2019 to read as follows (*changes italicized*):

REMEDY

Respondent, having discriminatorily refused to hire *all Unit employees laid off as a result of the closure of the Hotel Bel Air on September 30, 2009 who applied for employment with the Hotel prior to its reopening in October 2011 but were not rehired, including, but not limited to, those individuals listed in Attachment A (affected employees)*, must offer them reinstatement and make them whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

Respondent shall compensate *all affected employees* for their search-for-work and interim employment expenses regardless of whether those expenses exceed their interim earnings, computed as described above. See *King Soopers*, 364 NLRB No. 93 (2016).

Respondent shall file a report with the Regional Director for Region 31 allocating backpay to the appropriate calendar quarters. Respondent shall also compensate *all affected employees* for the adverse tax consequences, if any, of receiving one or more lump sum backpay awards covering periods longer than one (1) year. See *Advo.Serv of New Jersey*, 363 NLRB No. 143 (2016).

Respondent is also ordered to recognize UNITE HERE Local 11 forthwith, and, on request, bargain with UNITE HERE Local 11 as the exclusive representative of the employees in the appropriate unit concerning all terms and conditions of employment.

Respondent is further ordered to cease and desist from making any unilateral changes to bargaining unit employees' terms and conditions of employment without bargaining to impasse with UNITE HERE Local 11.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁵

ORDER

Respondent, Kava Holdings, LLC, d/b/a Hotel Bel Air, Los Angeles, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Refusing to hire employees who were members of the Union's bargaining unit prior to the temporary shutdown of the hotel in September 2009 in an attempt to avoid the obligation to recognize and bargain with UNITE HERE Local 11 as the exclusive collective bargaining representative of the hotel's unit employees.
- (b) Failing to recognize and bargain with UNITE HERE Local 11 as the exclusive collective-bargaining representative of the employees in the bargaining unit.
- (c) Unilaterally making changes to the terms and conditions of employment of bargaining unit members without bargaining to impasse with UNITE HERE Local 11.
- (d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

¹⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

- 5 a) Within 14 days from the date of the Board's Order, offer *all Unit employees laid off as a result of the closure of the Hotel Bel Air on September 30, 2009 who applied for employment with the Hotel prior to its reopening in October 2011 but were not rehired, including, but not limited to, those individuals listed in Attachment A (affected employees)*, full reinstatement to his or her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his or her seniority or any other rights or privileges previously enjoyed.
- 10 b) Make *all affected employees* whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.
- 15 c) Compensate *all affected employees* for the adverse tax consequences, if any, of receiving one or more lump sum backpay awards covering periods longer than one (1) year. Compensate *all affected employees* for their search-for-work and interim employment expenses regardless of whether those expenses exceed their interim earnings.
- 20 d) Upon request of UNITE HERE Local 11, rescind any unilateral change made to the terms and conditions of employment of bargaining unit employees since September 30, 2009.
- 25 e) File a report with the Regional Director for Region 31 allocating backpay to the appropriate calendar quarters.
- f) On request, bargain with UNITE HERE Local 11 as the exclusive representative of the employees in the appropriate bargaining unit concerning terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement.

- g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order. Within 14 days after service by the Region, post at its Los Angeles (Bel-Air), California hotel copies of the attached notice marked "Appendix"¹⁶ in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since July 26, 2011.
- h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C. June 17, 2021



Lisa D. Ross
Administrative Law Judge

¹⁶ If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT refuse to hire you in an attempt to avoid the obligation to recognize and bargain with UNITE HERE Local 11 as the exclusive collective bargaining representative of our bargaining unit employees.

WE WILL NOT fail and refuse to recognize and bargain with UNITE HERE Local 11 as the exclusive collective bargaining representative of our employees in the bargaining unit.

WE WILL NOT make unilateral changes to the terms and conditions of your employment without bargaining to impasse with UNITE HERE Local 11.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union, UNITE HERE Local 11 and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit.

WE WILL, on request, rescind any unilateral changes we have made to the terms and conditions of your employment since September 30, 2009.

WE WILL within 14 days from the date of the Board's Order, offer *all Unit employees laid off as a result of the closure of the Hotel Bel Air on September 30, 2009, who applied for employment with the Hotel prior to its reopening in October 2011 but were not rehired, including but not limited to, those individuals identified in Attachment A (affected employees)*, full reinstatement to their former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make *all affected employees* whole for any loss of earnings and other benefits resulting from our refusal to hire them, less any net interim earnings, plus interest compounded daily.

WE WILL file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters.

WE WILL compensate *all affected employees* for the adverse tax consequences, if any, of receiving one or more lump sum backpay awards covering periods longer than 1 year.

WE WILL compensate *all affected employees* for their search-for-work and interim employment expenses regardless of whether those expenses exceed their interim earnings.

**KAVA HOLDINGS, LLC, et al.,
d/b/a HOTEL BEL AIR**

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

11150 West Olympic Boulevard, Suite 700, Los Angeles, CA 90064-1824
(310) 235-7352, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/31-CA-074675 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (310) 235-7424.

APPENDIX A

1. Adam Gardner
2. Alberto Duran
3. Alex Barrios
4. Allyson
Tison/Tizon
5. Amanda Escobar
6. Ana Arrozola
7. Angel Loeches
8. Anthony Hop Pham
9. Antonio Diaz
10. Antonio Escobedo
11. Antonio Romero
12. Armando
Alvarenga
13. Armida Huevo
14. Arturo Leon
15. Beatriz Lemis
16. Boris Shaetz
17. Borislav
Kostadinov
18. Bradley Anderson
19. Carlos Burgos
20. Carlos Gutierrez
21. Carlos Perez
22. Carmen Casiano
23. Chad Biagini
24. Corina Ivanna
Ganame
25. Cristian Vargas
26. Danielle Rodriguez
27. Davis Komarek
28. David Leger
29. Delmy Alas
30. Domingo Antonio
31. Edgar Cano
32. Edith Calderon
33. Elizabeth Bono
34. Emilio Molina
35. Eric Flores
36. Erick Orozco
37. Esteban Pacheco
38. Evaristo
Vasconcelos
39. Feliciano Viscarra
40. Felipe Vasquez
41. Felix Gonzales
42. Fortino Luis
Martinez
43. Francisco Alas
44. Gilberto A. Moran
45. Gilberto Diaz
46. Giovanni
Rodriguez
47. Guadalupe Soto
48. Hector Jimenez
49. Hermina Urbana
50. Hignio Castellon
51. Howie Witz
52. Ignacio Escobedo
53. Inigo De La
Hidalga
54. Irma Zavala
55. Ismael Casanova
56. Ismael Witz
57. Ivan Stankov
58. Jacques Felix
59. Jaime Bravo
60. Jehane Delwar
61. Jennifer Contreras
62. Jennifer Jimenez
63. Jeremias Del Cid
64. Yixiong "Jimmy"
Dong
65. Joaquin Fuentes
66. Jorge Duarte
67. Jose Bojorquez
68. Jose de Jesus
Garcia
69. Jose Luis Gaeta
70. Jose Madrid
71. Jose Manzo
72. Jose Mojarro
73. Jose Polio
74. Jose Pavon
75. Jose Pinedo
76. Joseph Nava
77. Juan Carlos Pavon
78. Juan Contreras
79. Julio Cruz
80. Julio Pedro Perez
81. Justino Castellon
82. Karoly Zsiga
83. Kenny McCabe
84. Khenk Lee
85. Laura Fergusson
86. Leslie Miller
87. Manuel Giron
88. Maria Del Cid
89. Maria Gomez
90. Maria Lourdes
Nolasco
91. Maria Antoinette
Albano Gonzales
92. Mario Rodriguez
93. Martin Orozco
94. Matthew Biedel
95. Miriam
Martirosyan
96. Mishele Tapia
97. Mohammed
Masum
98. Narciso Lopez
99. Ngoc Mihn Hoang
100. Nora Melendez
101. Oscar Flores
102. Oscar Galdamez
103. Oscar Ingles
104. Oscar Martinez
105. Oscar Vasquez
106. Pablo Del Real

APPENDIX A

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|-----------------------------------|--------------------|
| 107. Patricia Miranda | 139. Wilson Alvaro |
| 108. Pedro Hernandez | |
| 109. Pedro Morales
Sanchez | |
| 110. Rafael Guevarra | |
| 111. Rafael Martinez | |
| 112. Raul Salazar | |
| 113. Raymundo Avina | |
| 114. Refugio Lopez | |
| 115. Rejo Jastoreja | |
| 116. Rigoberto
Carrillo | |
| 117. Rigoberto
Contreras | |
| 118. Robert "Charlie"
Hargitay | |
| 119. Roberto
Dominguez | |
| 120. Roel Andres | |
| 121. Roger Jackson | |
| 122. Ronald Hartling | |
| 123. Rosa Perez | |
| 124. Rudy Castellanes | |
| 125. Salvador
Gonzales | |
| 126. Salvador
Maldonado | |
| 127. Sapardjo
Diporedjo | |
| 128. Sergio Manzo | |
| 129. Sonia Mancias | |
| 130. Sonia Reyes | |
| 131. Steve Rasmussen | |
| 132. Tomas Alvarado | |
| 133. Tomas Ramirez | |
| 134. Ulises Trejo | |
| 135. Victor Pacheco | |
| 136. Victor Venegas | |
| 137. Virginia Cruz | |
| 138. William Carranza | |